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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 57,449

STRECKFUS STEAMERS, INC.,
Plaintiff-Petitioner,

CAPT. WM. F. CARROLL, CAPT. CARNELIUS RIEMER, CAPT. HARRY GRIESHABER, THOMAS P. CHAPMAN, THOMAS McKIBBEN, MARVIN CHAPMAN, ARTHUR JACKSON, GEORGE V. JOHNSON, MRS. BETTY SCHWALLER, MRS. LILY COLD, MRS. LUCY FOSTER, WILLIE COLEMAN, JOHN CARROLL, SPENCER T. JONES,
Defendants-Petitioners,

vs.

CITY OF ST. LOUIS and JOHN K. TRAVERS, Collector of the City of St. Louis,
Defendants-Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Missouri

BRIEF

In Opposition to Petition for Writ of Certiorari to Supreme Court of Missouri

Comes now the City of St. Louis, a municipal corporation of the State of Missouri, and John K. Travers, Collector of Revenue of the City of St. Louis, Missouri, the Defendant-Respondents, and respectfully make their response to the Plaintiff-Petitioner and Defendants-Petitioners' Petition for a Writ of Certiorari to the Supreme Court of the State of Missouri.

OPINIONS BELOW

This is a declaratory judgment action originally brought in the Circuit Court of the Twenty-second Judicial Circuit (St. Louis City) where Michael F. Godfrey, Judge, entered judgment for the Plaintiff (Plaintiff-Petitioner here) and employee defendants of Plaintiff (Defendants-Petitioners here). Such judgment was filed with an unreported memorandum opinion which is faithfully included in the Appendix of the **Petition for a Writ of Certiorari**, commencing at page -A-9- thereof. Appeals were duly prosecuted to the Saint Louis Court of Appeals (now by Constitutional amendment: Missouri Court of Appeals, Saint Louis District; Amendment to Article V, August 4, 1970), by the Defendant-Respondents where the trial court judgment was reversed and remanded with directions in favor of Defendant-Respondents. Such judgment with the Court's opinion is officially reported at **Streckfus Steamers Inc. v. City of St. Louis and John K. Travers, Collector of Revenue for the City of St. Louis, and Capt. Wm. F. Carroll, et al.**, No. 33787, June 15, 1971, 472 SW2d 660. Thereafter, Plaintiff-Petitioner and Defendants-Petitioners duly exhausted their procedural rights for rehearing or transfer to the Missouri Supreme Court in the Saint Louis Court of Appeals (both denied October 6, 1971), and their Application for Transfer to the Missouri Supreme Court was denied on December 13, 1971. The Missouri Supreme Court's order of denial of the Application to Transfer is not officially reported.

JURISDICTION

Defendant-Respondents urges the Court's notice of the insufficiency of the Plaintiff-Petitioner's and Defendant-Petitioner's statement of the particular basis for jurisdiction in compliance with Rule 23, 1, (b).

Here the Plaintiff-Petitioner employer cannot assert an "immunity" conferred by the terms of Section 601, 46 U.S.C.A. so as to come within the jurisdictional requirements of 28 U.S.C.A. 1257 (3). And the prior controlling decisions of this Court negate the tenuous, colorable claim of the repugnancy of the City ordinance (i.e. Section 145.-060, Revised Code of St. Louis) to the United States Statute. The Courts of the State of Missouri have not decided a Federal question of substance not heretofore determined by this Court, and have not decided any Federal questions in a way probably not in accord with applicable decisions of this Court, as would appeal to the sound judicial discretion of the Court under Rule 19.

QUESTIONS PRESENTED

I

Whether the petition is defective in that it prays for a writ of certiorari to be directed to the Missouri Supreme Court, rather than to the St. Louis Court of Appeals which rendered the opinion, and possessed of the record to be reviewed on certiorari.

II

Whether Section 601, 46 U.S.C.A. prohibits the City of St. Louis from requiring an employer to withhold an earnings tax due from the wages of its shipboard employees, where the business utilizes two river recreational excursion boats permanently based at the City which several times daily load and unload all passengers there but no other place and cruise on the Mississippi River presumably slightly threading to and fro of the imaginary boundary line at the center of the shifting channel between the States of Missouri and Illinois.

STATEMENT OF THE CASE

The case at bar presents the question of whether Streckfus Steamers, Inc. Plaintiff-Petitioner* herein, is required to withold City of St. Louis earnings taxes from the wages of all of its employees working on the Steamer Admiral and on the motor vessel Huck Finn, both excursion boats operated by Plaintiff-Petitioner on the Mississippi River several times daily from and returning to their permanent offices and docks in the City of St. Louis without stopping and without discharging either passengers or cargo at any other point (Tr. 3-5, 12).

Defendant-Respondent Collector of Revenue of the City of St. Louis demanded the withholding of City earnings taxes on November 9, 1968 (Tr. 2, 10), and Streckfus Steamers, Inc., filed a petition for declaratory judgment on July 2, 1969, requesting a resolution of the issues between the parties (Tr. 5-6). Certain individual Defendants-Petitioners, representing all classes of employees on the vessels, and the City of St. Louis and its Collector of Revenue, Defendant-Respondents, requested the judgment of the Trial Court on the issues presented (Tr. 9, 12).

Plaintiff-Petitioner Streckfus Steamers, Inc., contended that all employees on its vessels are within the description "seaman who is a member of the crew" and that consequently the collection of earnings taxes by withholding from wages is barred by the following language of Section 601, Title 46 of the United States Code Annotated (Tr. 4):

> "No part of the wages due or accruing to a master, officer, or any other seaman who is a member of the crew on a vessel engaged in the foreign, coastwise,

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* Parties are referred to by their present status, except in several instances where clarity of identity is otherwise served.

intercoastal, interstate, or noncontiguous trade shall be withheld pursuant to the provisions of the tax laws of any State, Territory, Possession, or Commonwealth, or a subdivision of any of them."

Defendant-Respondents contended that the statute is inapplicable to the facts at bar because the vessels were not engaged in "interstate trade" within the meaning of the statute (Tr. 11, 12), and further contended that none of the persons employed on board the vessels are seamen within the statutory definition (Tr. 12).

At the trial on November 17, 1969, the facts adduced were uncontroverted. The only witnesses who testified were certain individual Defendants-Petitioners, called by plaintiff, who were employed on the Steamer Admiral; namely, a captain (Tr. 13), a chief engineer (Tr. 62); a cafeteria worker serving food and cutting meat (Tr. 65); a steward (Tr. 70); a band leader (Tr. 79); a dishwasher (Tr. 81); a mate (Tr. 82); a concession stand worker (Tr. 90); and two deck hands (Tr. 76, 92).

Defendants-Respondents called no witnesses and introduced the earnings tax ordinance of the City of St. Louis, which was received in evidence without objection (Tr. 98, Defendants' Exhibit A).

The Trial Court ruled the issues in favor of the contentions of Plaintiff-Petitioner (Tr. 103-105). Defendants-Respondents' Motion for New Trial or in the Alternative to Amend the Judgment was timely filed (Tr. 105-108) and was overruled (Tr. 108). Notice of Appeal was timely filed and the appeal was duly perfected to the St. Louis Court of Appeals (Tr. 109-117).

Evidence

The principal witness was William F. Carroll, a steamboat captain who operated the Steamer Admiral on excursion trips on the Mississippi River from its offices and

dock at the foot of Washington Avenue in the City of St. Louis from mid-May to mid-September of each year (Tr. 13-14). The Admiral makes day and night excursions in the course of which it crosses the mid-channel of the river back and forth and it returns to the City of St. Louis at the end of each trip (Tr. 15-16). As an excursion vessel the Admiral carries no passengers from point to point and carries no freight from point to point. It makes no trips from the City of St. Louis as a port to any other port up or down the Mississippi River (Tr. 18).

Captain Carroll testified that the Huck Finn is also an excursion vessel used for one hour narrated sight-seeing trips during the day from the City of St. Louis, returning to the City of St. Louis without a stop. In evenings, the Huck Finn is available exclusively for charter excursion rides no longer than four hours and the vessel returns to the City of St. Louis at the end of each charter. The Huck Finn, like the Admiral, meanders across the thread line of the river (Tr. 19-22).

Captain Carroll testified that the Steamer Admiral was not in the ferry service across the river and in no way carried passengers or cargo to any port of call (Tr. 35-36). He stated that only the Delta Queen (not involved in tax withholding) presently transports passengers from port to port on excursions and that Plaintiff-Petitioner Streckfus Steamers, Inc., started in that business but now operates only local excursion vessels (Tr. 60-61).

The average number of passengers carried by the Steamer Admiral day and night ranges between 1,800 and 2,000 per trip (Tr. 52-53), and it makes two trips per day. It carries 200-225 employees, depending on the number of waiters carried, and the categories of employees include bartenders, musicians, deck hands, cooks, porters, powder-room maids, bus-boys, and concession help (Tr. 16). The Admiral is designed to serve large numbers of

people and has facilities to feed as many as 4,000 persons in one evening. The facilities include a snack bar, cafeteria service, and "bring your own" food facilities. There are several food service locations, one on the first deck and three on the fourth deck; soft drinks, beer and hard liquor are served (Tr. 22-24). Captain Carroll stated that the passengers occupy their time by self-amusement: eating, drinking, conversation, card playing, and by dancing to the music of a band which plays during both day and evening trips. The boat also provides the facilities of two gift shops, a card vending machine, a standard metal machine, miniature pony and space-ship rides for children, arcade type machines, and pinball and photograph devices (Tr. 25-27).

On the question of personnel employed on board, Captain Carroll testified that it would take approximately twenty persons to operate the Steamer Admiral without passengers, including a captain, mate, pilot, one or two engineers, strikers, water tenders, firemen, and deck hands (Tr. 37-38), and that of such persons only the captain, mate, pilot, and engineers were licensed by the United States Coast Guard (Tr. 40).

The total complement of employed personnel on board the Admiral were stated to be two roof watchmen; five or six bus boys on the fourth deck; five people in the dish room; six in the cafeteria serving line; five in the kitchen; two in the fourth deck snack bar; ten bus boy-porters on the cabin deck; steward and assistant steward; two deck supervisors; four powder-room maids; three people in the concession stands; two people in the bar; sixteen persons employed as cashiers, concession help, and porters on the first floor; six or seven persons in the engine room; eight to ten deck hands, a mate; waiters varying to as many as fifty on a given trip; eighteen cleaning women who clean only when the boat is tied up at the wharf; and an average of ten members of the orchestra (Tr. 46-50).

Except for the twenty persons required to navigate the vessel (Tr. 37-38), none of the other employed personnel had any duty pertaining to navigation. All employed personnel, however, were assigned emergency stations and engage in weekly drills of 20 to 25 minutes duration (Tr. 16-17, 52), while moored at the dock.

Captain Carroll testified that his duty hours on the Steamer Admiral were from 8:30 a.m. to 3 p.m. and that during that said period he spent from one to one and a half hours before the vessel left the dock, and spent the rest of his duty time during the trip on the river (Tr. 34). He testified that the turning point in the river on excursion trips depended on conditions and was indefinite (Tr. 57-59).

Witness Thomas P. Chapman, Chief Engineer, stated that he supervised four firemen, two water tenders, two strikers, two air-conditioning men, and one or two other engineers (Tr. 62-63).

Witness Lucy Mae Foster, a cafeteria worker, testified that the weekly emergency drills were performed on board after the Steamer Admiral docked in the afternoon or sometimes after night trips (Tr. 66-67). Witness Felix M. Chapman, the steward, confirmed the fact that the drills did not occur during a cruise (Tr. 73). He stated that no emergency had occurred during a cruise during the 19 years of his employment (Tr. 74-75).

Witness Cornelius John Riemer, a mate on the Admiral, testified that the average number of employed personnel per trip was about 140 persons, including approximately fifty waiters, divided into the following categories: waiters, roof watchmen, bus boys, cafeteria servers, kitchen help, soda fountain employees, snack bar employees, supply boys, stock boy for soda and beer, dishwashers, steward, assistant steward, dock supervisors, powder-room maids, concession workers, bartenders, porters, engine

room personnel, deck hands, purser's office employees, captain's office personnel, and cashiers (Tr. 85-90).

The earnings tax ordinance of the City of St. Louis, "Defendants' Exhibit A," imposes a one per cent tax on the wages of all employees subject to the tax who are residents of the City of St. Louis, and on that portion of the earnings of non-residents of the City of St. Louis attributable to services performed as a result of employment within the City. No question is raised herein to the applicability of the tax to any of the employees of Plaintiff-Petitioner, except for the issue of the applicability of Section 601, Title 46 of the United States Code Annotated as heretofore quoted (Tr. 4).

ARGUMENT

Whether the Petition Is Defective in That It Prays for a Writ of Certiorari to Be Directed to the Missouri Supreme Court, Rather Than to the St. Louis Court of Appeals Which Rendered the Opinion, and Possessed of the Record to Be Reviewed on Certiorari.

Here the Plaintiff and Defendant-Petitioners seek to have his Court direct a writ of certiorari to a court which has formerly declined to receive and pass judgment in the matter. As appears from the **Petition for a Writ of Certiorari**, at the caption of the pleading, page 1 "To the Supreme Court of Missouri", and at page 2 (**Petition**), "Opinion Below", a writ is sought to be directed to the Missouri Supreme Court. As it further appears from several sources in the **Petition** (i.e. p. 1, p. 2, "Jurisdiction", p. 3, "Questions Presented", and p. 27, "Conclusion", *inter alia*), the Petitioners in fact assert federal infirmities in the judgment and opinion of the St. Louis Court of Appeals and not a judgment or opinion of the Missouri Supreme Court. The Petitioners, precisely, ask this Court "* * * that a Writ of Certiorari issue to review the opinion of the St. Louis Court of Appeals * * *" (**Petition**, pgs. 1 and 2).

The notice of the Court is solicited to the fact that the **Petition** (p. 2) accurately states that the Missouri Supreme Court refused to transfer this cause from the St. Louis Court of Appeals (see Appendix A-1). The Missouri Supreme Court did not write an opinion but simply denied the Petitioners' Application for Transfer. This is not an affirmance of the judgment or adoption of the opinion of the St. Louis Court of Appeals and cannot be considered an expression of opinion on the merits of the case. Under the Constitution of Missouri at Article V, Section 4, the Missouri Supreme Court, in applications for transfer exer-

cises only superintending control over the St. Louis Court of Appeals which is exercised in a formal manner according to a limited set of decisional circumstances. Rule 84.05 (b) of the Missouri Supreme Court (Revised Statutes of Missouri, 1969, Vol. 5) is referrable to the Court's constitutional superintending power and set out the limited circumstances which must appear in order for the Court to consider an exercise of its jurisdiction in such regard. Where the court elects to exercise its jurisdiction, Rule 84.05 (b) operates to lodge the case in the Missouri Supreme Court for judgment. This, of course, did not occur here.

While the application to the Missouri Supreme Court was necessary in order for the St. Louis Court of Appeals to become the final, highest court of the State in which a decision could be had in accordance with the dictates of 28 U.S.C. 1257 (on refusal of the Missouri Supreme Court to exercise jurisdiction), this is not to say that the judgment and opinion of the Court of Appeals then becomes the judgment and opinion of the Supreme Court, and therefore a writ of certiorari, in order to reach the record of the deciding court ought to go to the Supreme Court. To the contrary, under Missouri law the transcript in the cause remained in the St. Louis Court of Appeals (where no order of transfer occurs as here) according to the Missouri Constitution, Article V, Section 10, and Missouri Supreme Court Rule 84.05.

Further, the transcript contains the whole record (i.e. pleading, proceedings, evidence, orders, and judgments, Rule 84.12 (b)) necessary to a determination of all questions before the appellate court (i.e. St. Louis Court of Appeals). The transcript of the record was never before the Missouri Supreme Court and is not now in such court. Consequently, certiorari to the Missouri Supreme Court would not function to bring the judgment and opinion Petitioners wish to be reviewed to this Court.

This point is elementary and has been so treated by the Court in its past handling of such factual circumstances. In **Williams v. Florida**, 399 U.S. 79, 90 S. Ct. 1893, 26 L. Ed2d 446, the writ was directed to a lower Florida appellate court and that lower court's judgment was affirmed. The Court made clear the reason for its action by the explanatory footnote No. 5, to the opinion (l.c. L.Ed2d 449). Earlier, in **Western Union Telegraph Co. v. Priester**, 276 U.S. 252, 48 S. Ct. 234, 72 L.Ed 55, the Court illucidated the rule for its dismissal stating:

> "But as the supreme court of Alabama, by denying the petition for certiorari, on the face of the record did not pass on the merits, the writ of this court in No. 183 was properly directed to the court of appeals, and that in No. 189 is dismissed."

The proper action indicated by the status of the case as it presently exists before this Court appears to be an entry of an order denying the petition for certiorari because of lack of jurisdiction.

II. Whether Section 601, 46 U.S.C.A. Prohibits the City of St. Louis From Requiring an Employer to Withhold an Earnings Tax Due From the Wages of Its Shipboard Employees, Where the Business Utilizes Two River Recreational Excursion Boats Permanently Based at the City Which Several Times Daily Load and Unload All Passengers There But No Other Place and Cruise on the Mississippi River Presumably Slightly Threading to and Fro of the Imaginary Boundary Line at the Center of the Shifting Channel Between the States of Missouri and Illinois.

In their Petition, Petitioners urge upon the Court a view which avoids all reasonable consideration of the intent or purpose of Congress in enacting Section 601, 46 U.S.C.

(pertinent part). The Petitioners attempt to force their self-assumed meaning of the statute through a blind application of a talismanic test never adopted by this Court and very pointedly rejected by it. Misunderstanding of the pronouncements of this Court have led to the Plaintiff's misreading and incomprehension of the judgment and opinion of the St. Louis Court of Appeals. The test the Plaintiffs would have this Court apply involves a simple geographic determination of whether their navagational operations on the Mississippi River "thread" the center of main channel so as to technically enter the Illinois side. They urge such a test regardless of its strained, academic character, or its lack of any real consequence upon the flow of commerce and without any real consideration given to the settled, historic treatment of interstate commerce by Congress and this Court.

Respondents suggest that the Petitioners' approach really presents no matter worthy of the interest of this Court. As we will endeavor to make clear following, this Court has made abundantly plain and has left no room for serious question that the regulation of interstate commerce is a delicate matter, grounded in common sense and highly respective of practicality. We respectfully submit that the St. Louis Court of Appeals has been solicitously faithful to the true and controlling teachings of this Court, and the question raised by the Petitioners is the product of their failure to intelligently apply such teachings.

While a survey of the cases provides background and enlightenment for accurate perception of the controlling rule in this case, Respondents believe that the opinion by Mr. Justice Frankfurter in **Central Greyhound Lines v. Mealey**, 334 U.S. 653, 68 S. Ct. 1260, 92 L.Ed. 1633, is the latest, most instructive and authoritative pronouncements by the Court and unmistakably decisive of

the questions raised in this case. There the Court expounded upon and clarified the holdings in **Lehigh Valley R. Co. v. Pennsylvania**, 145 U.S. 192, 12 S. Ct. 806, 36 L.Ed. 672.

The Court will recall that in the **Central Greyhound Lines v. Mealey** (i.e. Central Greyhound) the company contended first that it was not subject to a tax imposed on its operations by the State of New York. The New York Tax Commission had decided that the State's franchise tax, measured by gross receipts derived from transportation between points within the State but over routes that utilized the highways of Pennsylvania and New Jersey, was applicable to all the receipts. Forty-three percent (43%) of the operations were outside of New York State. The basis of this claim was, like here, that since the transportation crossed state lines it was interstate commerce and therefore New York could not constitutionally tax such gross receipts. (A secondary claim urged that if taxation was not unconstitutional, New York could only tax so much of the gross receipts as were attributable to the mileage covered in New York.)

In deciding that not every burden on interstate commerce is unconstitutional this Court went to great pains to illucidate the precepts governing the Federal-States relationship and the State-to-State implications.

In cogent language the Court established the context of inquiries as to whether a specific action of a state offends the Commerce Clause or a particular exercise of power of Congress under the Clause. As Mr. Justice Frankfurter phrased it (92 L.Ed. 1637):

> This case serves to remind once more that courts do not adjudicate abstractions, such as "What is interstate commerce?" Also, it again illustrates that even if it be found that certain transactions in fact constitute interstate commerce, such conclusion does

not answer the further inquiry whether a particular assertion of power by a State over such transactions offends the Commerce Clause.

The Court pointed out that determinations as to whether a State's exercise of power is proper or not, must depend upon something more substantial and objectively important than the geographic fact that state lines are crossed. The observations of the Court are worth recalling. In objecting to the erroneousness of the "language" of some prior decisions which, while actually taking into account the practicalities of the considered situations, spoke in such a way as to disregard the fact of the existence of interstate commerce, where in truth it existed but was of such a minor character as to be inconsequential as compared to the overwhelming domestic, state character. The Court adopting its prior consistent teachings: (92 L.Ed. 1639)

> * * * Regulation and commerce among the States both are practical rather than technical conceptions, and, naturally, their limits must be fixed by practical lines, Galveston, H & S.A.R. Co. v. Texas, 210 US 217, 225, 52 L. Ed. 1031, 1036, 28 S. Ct. 638. But to label transportation across an interstate stream "local commerce" for some purposes when it is "interstate commerce" in other relations, see, e.g. Covington & C Bridge Co. v. Kentucky, 154 US 204, 38 L Ed 962, 14 S. Ct. 1087, 4 Inters Com 649, is to use loosely terms having connotations of constitutional significance. To call commerce in fact interstate "local commerce" because under a given set of circumstances, as in the Lehigh Valley Case, a particular exertion of state power is not rendered invalid by the Commerce Clause is to indulge in a fiction. * * *

Again to make its holding so clear that future confusion would not likely reoccur the Court repeated: (92 L.Ed. 1640)

> • • • The kind of confusion to which the Lehigh Valley opinion has given rise results from employing a needless fiction—calling commerce local which in fact is interstate—as a matter of stating that a particular exercise of State power is not invalid even though it affects interstate commerce. The difficult task of determining whether a phase of commerce, concededly interstate, is subject to a particular incidence of State regulation, through taxation or otherwise, is not lessened by calling interstate commerce local commerce in order to sustain its local control. To state this persistent and protean problem of our federalism in the form of a question—begging fiction, is not to answer it. • • •

With the destruction of any automatic decisional significance for the phase "interstate commerce" the Court then addressed the real or controlling aspects of resolving the sometimes thorny question of substantial burden on interstate commerce.

The Court isolated a number of factors as important to resolution of such questions, a fair understanding of the Court's meaning instructs that such isolated matters are not intended to be exhaustive but sharply illustrative. These factors included circumstances such as: The reasonable benefits another State confers upon the transportation while within its borders; the trifling in quantity proportion of transactions within the other State's territory; and whether the State's exaction is constitutionally a fair demand where such state has a special relation in the transaction. (See: 92 L.Ed. 1640.) Supportive of the continuity of Central Greyhound with prior decisions actually relying on such reasonable considerations, even while colorably relying on the impermissibly inadequate "interstate commerce" test, the Court cited the existence of these factors in prior cases. (See: 92 L.Ed. 1640-1641.)

Here, while it is true that the reach of a statute (46 U.S.C.A. Sec. 601) rather than a constitutional test of the statute is involved, still the power exercised by Congress in this area is referrable to the Commerce Clause and the specific intent of Congress is to be properly settled by imputing an object or purpose to further proper regulation and control within the meaning of the Commerce Clause. This is to say, Congress does not operate in a vacuum without regard for its past clearly discernable plan and the settled constructions placed upon its acts by this Court. (**New York ex rel. Cornell Steamboat Co. v. Sohmer**, 235 U.S. 549, 35 S. Ct. 162, 59 L.Ed. 335; **United States v. Chandler-Dunbar Water Power Co.**, 209 U.S. 447, 28 S. Ct. 579, 52 L.Ed. 881.)

Applying these principles to the case at hand it is urged that Section 601, 46 U.S.C. must be considered from the standpoint of Congress' legitimate interest in regulating interstate commerce and the exercise of State powers in relation thereto so as to promote and maintain the free flow and intercourse which is the object of the Commerce Clause.

Initially, as the St. Louis Court of Appeals recognized and expressly documented, the immediate purpose of Congress in enacting Section 501, 46 U.S.C.—amendment thereto—was "* * * to prevent multiple withholdings from the wages of seamen who might be in ports of different states when they received their pay. * * *" (See: **Streckfus Steamers, Inc. v. City of St. Louis**, 472 SW2d 660, l.c. 663). Further, as the St. Louis Court of Appeals cites (same l.c. supra), the substantiation of this Congressional intent is recorded at **2 U.S. Code, Congressional and Administrative News, 86th Congress—First Session** 1959, pp. 2530-2536.

Therefore, proper evaluation of the exercise of the power asserted by the City of St. Louis necessarily in-

volves the discovery of whether the vice protected against by the Statute (i.e. 46 U.S.C. 601) is induced or worked by the City's act. The Plaintiffs' "interstate commerce" automatic test sweeps with too all-inclusive dimensions and totally negates that refined accommodation with the legitimate interests of the States that Congress has always carefully respected.

Here, the travel across the State boundary of Illinois is first a presumptive crossing, and occurs simply because the two States' boundaries are defined by the center-line of the main navigation channel. This channel continually shifts with the vagarities of the river flow and obstructions. As before discussed, to make such a factor decisive is to ignore the insistence of this Court upon rationality. There is no aspect of the Plaintiff-Petitioner's business intentionally directed to travel in Illinois.

Further, the base of operations is located within the City of St. Louis. The Company offices, its administration and the control of all its operations are situated in and directed from St. Louis. The nature of its business involves "transportation" only in a limited sense; passengers do not partake of its facilities to be transported from one place to another interstate or intrastate. The vessels are simply the type of "excursion boats" common to metropolitan areas near navigable waters devoted to shipboard picnics and relaxation. The patrons are aboard for a relatively short time (a matter of hours) and such excursion rides are repeated several times daily. The employees too, have a distinct and substantial relationship to the City of St. Louis. They daily report for work to the site of the Company offices in St. Louis (where both vessels are moored). At the conclusion of their working hours they depart from the same location within the City. The vessels of the Company never stop at another port

at any time in the course of their repeated daily excursions. No goods are carried; no passengers are either taken on or discharged other than at the office and mooring location within St. Louis. The City of St. Louis is the only authority which renders fire, police, water and other such services and facilities to the Company, its properties and its employees. By their own admission, the Petitioners establish that in the long history of their operations no other state authority has attempted to exercise any tax collecting system other than Missouri and the City of St. Louis.

As the St. Louis Court of Appeals pointed out (472 S.W.2d l.c. 663), these circumstances do not give rise to any imposition or harassment of seamen. There is no rational possibility, under the unique lack of any relationship to any other State or even local authority outside of the City of St. Louis, within Missouri that other or additional withholdings will occur. Certainly the long so unencumbered history of the Petitioner's operations decisively demonstrate this. The most reasonable and efficient means of collecting the earnings tax owed by the employees of the Company, is withholding at the accounting offices of the place of employment. (There exists no question that such tax is owing.)

These incidents of the circumstances surrounding the Petitioners' operations and employment are urged as clearly demonstrating the *de minimis* relationship to interstate commerce and the total absence of any substantial burden on such commerce. And as before said, there is abundant support for the conclusion that, under the unique circumstances of the case, withholding at the sole and only place of payment of wages is a reasonable and effective procedure, fair and unburdensome for both the employee and the employer, and a viable means of distributing the cost of government equally.

Objectivity is truly subverted by a contention that Congress intended to exercise its power to thwart the fair, reasonable and unburdensome means used here. Respective of employees burden, one has but to consider the alternative to the employee, namely, making minute periodic payments directly to the City himself, to comprehend the interest of the employee. No sensible construction of Section 601, 46 U.S.C.A. supports working such a result.

The Petitioners attempt to create a problem where none exists through their outside the record assertions regarding the widely adverse implications of permitting the Court of Appeals decision to stand. However, the whole history of the Petitioners' operations and the total absence of any real proof belie such "boot-strap" argument. (See **Petition**: pgs. 14, 21, 23 and 25-27). The plain fact is that no other jurisdiction has construed its laws to require withholding from the Company employees' wages. The whole of the argument respecting the State of Illinois, flies in the face of the facts and is so speculative as to merit no serious consideration. There is simply no truth to the assertion that "many carriers which operate on the Mississippi River" will be "affected" by the St. Louis Court of Appeals decision. In fact it is hardly conceivable that any besides the Petitioners could be affected because of the unique nature of this case. Should there be others so situated at other locations of parallel circumstances, a like result would be also just.

Petitioners attempt to attack the St. Louis Court of Appeals decision through the device of attributing to that Court a crucial reliance on **People of the State of New York ex rel. Cornell Steamboat Company v. Sohmer**, 235 US 549, 35 S.Ct. 162, 59 L.Ed. 355. After such misplaced attribution the Petitioners then attempt to negate such constructed authority.

A careful and fair analysis of the Court of Appeals opinion demonstrates that the Court construed Section 601, 46 U.S.C.A. in the light of the documented intent of Congress and the teachings of this Court.

As before discussed at some length, this Court has illucidated its prior decisions clearly instructing that such term "interstate commerce" is not a magic touchstone that automatically solves interstate commerce relationships and that the substantial practical considerations must be carefully considered. This is precisely the course of the Court of Appeals. The first **Cornell** case (supra) was discussed as was the case cited by the Petitioners, **Cornell Steamboat Co. v. United States**, 321 U.S. 634, 64 S.Ct. 768, 88 L.Ed. 978, solely to illustrate the proper perspective in viewing the relationship of factual circumstances to interstate commerce. As before pointed out, this Court has approved such approach, even though critical of some of the expressions utilized in reaching the result. (**Central Greyhound Lines, Inc. v. Mealey**, (cite supra); **United States v. Yellow Cab Co.**, 332 U.S. 218, 67 S.Ct. 1560, 91 L.Ed. 2010.) More to the point, the Petitioners' criticism results from a misapprehension of the basis of decision of the St. Louis Court of Appeals.

CONCLUSION

Defendant-Respondents respectfully pray this Honorable Court to deny Plaintiff and Defendant Petitioners' Petition for a writ of certiorari; such Petition seeks to review a court which is not possessed of the record and therefore the Petition ought to be dismissed; and the claims of the Petitioners are opposed to the settled principles of law which were faithfully applied by the St. Louis Court of Appeals in its judgment and opinion.

Respectfully submitted

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